

Claim 14 stands rejected under 35 U.S.C. §112, second paragraph, on the basis there is no antecedent basis for the term “the surface”. Responsive thereto, Applicant has amended claim 14 to depend from claim 9, which recites “a surface”. Applicant accordingly respectfully submits the 35 U.S.C. §112, second paragraph, rejection of claim 14 has been overcome.

Claims 1, 5-19, 23-25, and 30 stand rejected under 35 U.S.C. §102(b) by Wang (U.S. Patent No. 6,880,179 B2). Applicant respectfully traverses the above-recited rejection on the basis Wang in fact does not disclose each and every feature recited in the claims.

Claim 1 recites a seal and a stem received in an outlet waste with the stem being selectively adjustable in length for selectively engaging the seal with a portion of the outlet waste. Claim 1 accordingly specifically recites that the stem fits in and engages the outlet waste and further that the adjustment of the stem places the seal in sealing arrangement with the outlet waste for the sealing of the outlet waste. Applicant respectfully submits Wang simply does not disclose the above-recited features.

Wang discloses a sink stopper including a strainer 2 disposed in a drain hole 12. The strainer 2 includes a peripheral flange 23 that engages the drain hole 12 in order to mount the sink stopper within the drain hole 12. Wang further discloses an operating device 4 residing within the strainer 2 for the purpose of moving a closure member 5 in sealing arrangement with the peripheral flange 23 to seal the sink stopper and thus the drain hole 12. Wang accordingly does not disclose a stem received in an outlet waste because Wang clearly discloses the strainer 2 fits in the drain hole 12. Moreover, the operating device 5, which the Examiner considers Applicant’s stem, cannot be considered as received by the drain hole 12 because Wang specifically discloses that the operating device 4 resides within the strainer 2. Furthermore, Wang clearly does not disclose a seal placed in sealing arrangement with the outlet waste for the

sealing of the outlet waste because Wang discloses that the closure member 5 engages the peripheral flange 23 of the strainer, which in no way is the drain hole 12 or waste outlet.

Applicant therefore respectfully submits claim 1 is patentable over Wang because Wang simply does not disclose Applicant's stem received in a waste outlet and Applicant's seal that directly engages the waste outlet.

Claims 5 and 6 are patentable over Wang based on the preceding arguments with respect to claim 1.

Claim 7 recites the strainer is removable from the stem or seal. The strainer 2 of Wang engages the operating device 4, and there is no disclosure that the strainer 2 is made to be readily removable from the operating device 4.

Claims 8-14 are patentable over Wang based on the preceding arguments with respect to claim 1.

Claim 23 recites the stem is adapted to be freely received in an outlet waste. In contrast, Wang discloses a sink stopper including a strainer 2 disposed in a drain hole 12. The strainer 2 includes a peripheral flange 23 that engages the drain hole 12 in order to mount the sink stopper within the drain hole 12. Wang further discloses an operating device 4 residing within the strainer 2 for the purpose of moving a closure member 5 in sealing arrangement with the peripheral flange 23 to seal the sink stopper and thus the drain hole 12. Wang accordingly does not disclose a stem received in an outlet waste because Wang clearly discloses the strainer 2 fits in the drain hole 12.

Claim 24 is patentable over Wang based on the preceding arguments with respect to claim 1.

Claim 25 recites the plug as provided in combination with a waste outlet. Wang discloses a sink stopper including a strainer 2 disposed in a drain hole 12. Consequently, while Wang discloses a sink stopper, the sink stopper merely fits in the drain hole 12 and is not used in combination with the drain hole 12 because the strainer 2 is not physically connected to the drain hole 12. Wang accordingly does not disclose a plug in combination with a waste outlet.

Claim 30 is patentable over Wang based on the preceding arguments with respect to claim 1.

Claims 1-4, 6-18, 20, 21, 23, and 25-30 stand rejected under 35 U.S.C. §103(a) by Cuschera (U.S. Patent No. 4,339,832) in view of Hiertz (U.S. Patent No. 3,588,928). Applicant respectfully traverses the above-recited rejection on the basis the combination of Cuschera in view of Hiertz as suggested by the Examiner either cannot achieve Applicant's claimed invention or violates M.P.E.P Section 2143.01(V).

Cuschera discloses a flush mounted pop-up drain fitting for use with a bath tub. The drain fitting includes a post 19 secured to a drain body 11, a rigid drain cover 31 secured to the post 19, and a gasket 32 secured to the rigid drain cover 31. A spring 28 resides between the rigid drain cover 31 and the post 19 to bias the rigid drain cover 31 which is movable along the post between an open position and a closed position that seals the gasket 32 over a lip 14 of the drain body 11, thereby sealing the drain body 11. The Examiner admits Cuschera does not disclose a strainer, but nevertheless asserts it would have been obvious to mount the strainer disclosed by Hiertz above the gasket 32 disclosed by Cuschera. In placing the strainer disclosed by Hiertz above the gasket 32 disclosed by Cuschera, the strainer must reside between the gasket 32 and the rigid drain cover 31. The placement of the strainer above the gasket 32 and below the rigid drain cover 31 leads to two scenarios, both of which render the combination of Cuschera in view

of Hiertz improper.

Under the first scenario, the strainer would be incapable of performing its intended purpose of catching waste, and as such would not achieve Applicant's claimed invention. As shown in Figure 3, Cushera clearly discloses that the drain fitting including the rigid drain cover 31 resides completely within the drain body 11 when in the closed position. Cushera further clearly discloses that the rigid drain cover 31 is sized to substantially completely cover the interior dimensions of the drain body because the purpose of the rigid drain cover 31 is to block the drain body 11 and make it flush with the bottom of the bath tub. Based on the disclosure of Cushera, the strainer accordingly would also have to reside completely within the drain body 11, and, in order to reside completely within the drain body 11, the strainer as a matter of course must be sized no greater than the rigid drain cover 31. With the strainer disposed within the drain body 11 and limited in size to no greater than the rigid drain cover 31, the strainer simply would be completely inoperative and incapable of performing its intended purpose of catching waste because the rigid drain cover 31 would block the strainer and prevent waste from collecting therein. Moreover, Applicant would like to point out that reducing the size of the rigid drain cover 31 is not an option because such a modification would violate the intended purpose of the rigid drain cover 31 which is to block the drain body 11 and make it flush with the bottom of the bath tub. Applicant therefore respectfully submits claims 1-4, 6-18, 20, 21, 23, and 25-30 are patentable over the first scenario in the combination of Cushera in view of Hiertz because the resulting combination produces a strainer wholly incapable of trapping waste, and, as such, fails to produce a device with a strainer that achieves Applicant's claimed invention.

Under the second scenario, the strainer, in order to be operative, would have to extend around the rigid drain cover 31 and up into the bath tub, which violates M.P.E.P Section

2143.01(V). M.P.E.P Section 2143.01(V) states, “If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Applying M.P.E.P Section 2143.01(V), there can be no suggestion or motivation to locate the strainer above the gasket 32 and below the rigid drain cover 31 with the strainer extending around the rigid drain cover 31 and into the bath tub such that the strainer is exposed to catch waste because extending the strainer around the rigid drain cover 31 and into the bath tub renders Cuschera’s drain fitting unable to perform according to its intended purpose. Cuschera specifically recites in column 1, lines 40-46, “... the drain fitting ... is designed to eliminate interference with a bather using the tub. More specifically, the resealable drain fitting of the present invention is designed so that the drain sealing cover thereof is disposed flush with the bottom surface of the tub in which the drain fitting is installed, when the drain sealing cover is in the sealed position.” Cuschera accordingly specifically discloses that the drain fitting does not interfere with a bather using the tub based on a “design” whereby the drain sealing cover is disposed flush with the bottom surface of the tub in which the drain fitting is installed. It is clear that extending the strainer around the rigid drain cover 31 and into the bath tub such that the strainer is exposed to catch waste renders the drain fitting incapable of satisfying the special feature of its design. It is impossible for the drain fitting to be disposed flush with the bottom surface of the tub if the strainer extends around the rigid drain cover 31 and into the bath tub such that the strainer is exposed to catch waste. Applicant therefore respectfully submits that there is in fact no suggestion or motivation to modify the Cuschera drain fitting with the Hiertz strainer as set forth under the second scenario because such a modification renders the Cuschera drain fitting unsatisfactory for its intended purpose of being

disposed flush with the bottom surface of the tub. Applicant therefore respectfully submits claims 1-4, 6-18, 20, 21, 23, and 25-30 are patentable over the second scenario in the combination of Cuschera in view of Hiertz because the resulting combination violates M.P.E.P Section 2143.01(V).

Claim 22 stands rejected under 35 U.S.C. §103(a) by Cuschera (U.S. Patent No. 4,339,832) in view of Hiertz (U.S. Patent No. 3,588,928) further in view of Richards (U.S. Patent No. 3,525,105). Applicant respectfully traverses the above-recited rejection based on the preceding arguments regarding the combination of Cuschera in view of Hiertz. The combination of Cuschera in view of Hiertz as suggested by the Examiner either cannot achieve Applicant's claimed invention or violates M.P.E.P Section 2143.01(V), and Richards does nothing to change the improper combination of references. Moreover, Richards discloses a spring 32, which in no way is Applicant's non-threaded sleeve recited in claim 22. Applicant therefore respectfully submits claim 22 is patentable over the combination of Cuschera in view of Hiertz further in view of Richards.

The prior made of record but not replied upon has been reviewed by Applicant and is deemed not to anticipate nor render obvious the claims invention.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejected claims and earnestly solicits early allowance of the referenced application.

Respectfully submitted,

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CERTIFICATE OF MAILING

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